

U S MAGISTRATE J KELLEY ARNOLD

CV 00 05626 #00000097

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANNETTE HALL,

Plaintiff,

vs

No C00-5626-(RJB)JKA

KIDDE, INC , a Corporation,
LEHEL CORPORATION,
ELECTROLUX CORPORATION,
ELECTROLUX, L L C and
ELECTROLUX LEHEL CORPORATION,

Defendants

PLAINTIFF'S MOTIONS IN LIMINE

Comes now Plaintiff and moves the Court for an Order regarding the following matters in
limine

- 1 Excluding any evidence relating to benefits received by Plaintiff through Washington
- 2 State Department of Labor & Industries
- 3 Exclude all references to the effects of income tax on future earnings
- 4 Exclude or limit the testimony of Ron Mauney, Kidde, Inc 's 30 (b)(6) designee
- 5 Exclude or limit the testimony of Carl Tomeo, Sam Solomon and Miklos Madarasz

English, Lane,
Marshall, Barrar,
Stahnke &
Vanderwood, PLLC

Attorneys at Law

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1 5 Limit the liability experts proposed by Defendant to either Andrew Held or Ralph
2 Hudson, but not both, and limit the testimony of the person chosen to testify to information
3 contained in the disclosure of expert testimony filed by defense counsel and dated July 25, 2001
4 This motion is based upon the records and files herein and upon the attached Affidavit of Donald
5 L. English, attorney for Plaintiff herein
6

7 **AFFIDAVIT**

8
9 STATE OF WASHINGTON)

10 ss
County of Clark)

11
12 Donald L. English, being first duly sworn on oath, deposes and says:

13 I am the attorney for the Plaintiff in this case

14 In support of my Motions in Limine, I offer the following

15
16 1 **COLLATERAL SOURCE** Plaintiff believes it would be appropriate to limit
17 evidence related to payments made by Washington State Department of Labor & Industries under
18 the case of *Stone v. Seattle*, 64 Wn 2d 166

19
20 2 **TAXATION**. Inappropriate under the case of *Hinzman v. Palmanteer*, 81 Wn 2d 327,
21 501 P2d 1228 (1972), to exclude references to the effects of income taxes on future earnings

22
23 3 **TESTIMONY OF RONALD MAUNEY** The Court is aware of Plaintiff's position that
24 the deposition of Ronald Mauney as Defendant's CR 30 (b)(6) designee was not conducted by
25 Defendant in good faith. Affidavit of Counsel in Support of CR 37 Relief outlines details
26 relating to that assertion. Plaintiff further asserts that it would be proper to exclude the testimony
of Ronald Mauney as a sanction that the Court would have the power to invoke under FRCP 37

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(c)(1) Pursuant to that rule, "a party without substantial justification fails to disclose information required by Rule 26 (a) or 26 (e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on any motion, any witness or information not so disclosed. In this case, Plaintiff believes it is appropriate to exclude the testimony of Mr Mauney altogether, or at least limit testimony to answers contained in his deposition

4 EXCLUSION OF TESTIMONY OF CARL TOMEO, SAM SOLOMON AND

MIKLOS MADARASZ Plaintiff again refers to information contained in Plaintiff's request for FRCP 37 Relief in support of this Motion

Ronald Mauney was the Defendant's FRCP 30 (b)(6) designee. Defendant should not now be allowed to introduce evidence of others who may have been more appropriately designated under FRCP 30 (b)(6) to testify in this case

Certainly the Court has discretion under CR 37 (c) to sanction Defendant for its failure to provide adequate discovery

In addition to the foregoing, if the Court allows the testimony of the individuals involved, the testimony should be limited to the knowledge imparted by Mr Mauney in his deposition

In addition to the foregoing, testimony of individuals' knowledge would be limited by the rule related to cumulative evidence (FRE 403)

In the case of witness Sam Solomon, Mr Solomon's identity was not made available to Plaintiff through interrogatory requests and, in fact, to Plaintiff's counsel's recollection, not until Defendant Kidde, Inc 's Pretrial Statement was filed, was his name ever known to Plaintiff's counsel

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TESTIMONY OF ANDREW HELD and/or RALPH HUDSON: Testimony

proposed by Defendant with regard to Andrew Held and Ralph Hudson as stated in Defendant's Pretrial Statement is identical. Having two witnesses testify as to identical opinions would be unduly cumulative and unnecessary (FRE 403)

In addition, Plaintiff believes that expert testimony from either Mr. Held or Mr. Hudson should be limited to information contained in a disclosure of expert testimony. Defense counsel's disclosure dated July 25, 2001. That opinion was "Mr. Held will express the opinion that the cream whipper that allegedly injured Plaintiff, was abused, showed evidence of cross-threading on the threads of the white cap, damage to the threads of the cannister and was in very poor condition.

It should be noted that Mr. Slagle's opinion with regard to the unsafe character of the cream whipper was well known to the defense, and their experts, well over a year, prior to when this disclosure of expert testimony was given. Based on the defense's disclosure of testimony, Plaintiff determined not to take the deposition of Mr. Held or Mr. Hudson. It was not until subsequent disclosure of experts and opinions by Mr. Foley dated August 24, 2001, was it disclosed that Mr. Held and Mr. Hudson expanded their opinion to include the following: The design of the charger holder and cannister and white cap were adequate and appropriate for the intended ordinary use of the product. If these new opinions were opinions that were previously held by these experts, they should have been disclosed in the earlier disclosure of experts.

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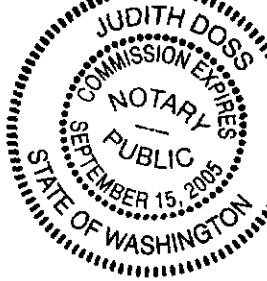
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1 Dated this 20 day of December, 2001

2 Donald L. English
3 Donald L. English, WSBA #5606
4 Of Attorneys for Plaintiff

5 SUBSCRIBED and SWORN to before me this 20th day of December, 2001



Judith Doss
NOTARY PUBLIC in and for the
State of Washington
My Commission Expires 9/15/05

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Marshall, Barrar,
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Attorneys at Law

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered a true copy of the foregoing document to Douglas Foley and sent by U S Mail to Mark Beard at the following addresses

Douglas Foley
Attorney at Law
1220 Main Street #300
Vancouver WA 98660

Mark Beard
Attorney at Law
1420 Fifth Avenue #4100
Seattle WA 98101-2338

Dated this 20th day of December, 2001


Gayle L. Hanley